

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California, 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Patrick O'Donnell, Committee Counsel  
Small Claims and Limited Cases Subcommittee  
Hon. Mary Thornton House, Chair  
Cara Vonk, Subcommittee Counsel, 415-865-7669  
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DATE: August 11, 2003

SUBJECT: Small Claims Hearings: New Optional Request and Order to Postpone  
(approve forms SC-110 and SC-111) (Action Required)

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Issue Statement

Judicial Council-sponsored legislation, effective January 1, 2003, requires that a good cause request to postpone a small claims hearing must be filed at least 10 days before the hearing date, unless the requesting party gives the court good cause for filing late. (Code Civ. Proc., § 116.570.) There currently is no form to assist small claims parties in making the request and to foster uniform application of small claims postponement proceedings in all courts.

Recommendations

The Civil and Small Claims Advisory Committee recommends that in order to implement the requirements of Code of Civil Procedure section 116.570 on postponement procedures, the Judicial Council, effective January 1, 2004:

1. Approve the *Request to Postpone Small Claims Hearing* (new form SC-110) for optional use, and
2. Approve the *Order on Request to Postpone Small Claims Hearing* (new form SC-111) for optional use.

The new forms are attached at pages 5–6.

### Rationale for Recommendation

Two new optional small claims forms would help implement recent legislation that requires a request to postpone a small claims hearing to be filed at least 10 days before the hearing.

In 2001, the Judicial Council circulated a similar *Request to Postpone Small Claims Hearing* form with the court's order on the reverse of the form and a related rule. Eighteen responsive comments were received. The committee agreed with one commentator who suggested that the proposed procedure be established through legislation instead of a rule of court. The Judicial Council then sponsored such legislation, which went into effect on January 1, 2003.

The legislation requires that a request for postponement be filed at least 10 days before the hearing, consistent with the practice in many courts. (See Code of Civ. Proc., § 116.570(a).<sup>1</sup>) Additional new legislation, Code of Civil Procedure section 116.340, increased the minimum time for service of a small claims claim before hearing from 10 to 15 days if the defendant resides within the county and from 15 to 20 days if the defendant resides outside the county.

Section 116.340 addresses a problem with the former statutes, under which the last day for serving a claim was 10 days before hearing, this effectively preventing any defendants so served from making a timely request for postponement, which also was required to occur at least 10 days before the hearing. Under the new law, a defendant who is served a claim on the last day for service—which is 15 or 20 days before hearing depending on whether defendant resides in or outside the county—now has at least 5 days for making a timely request for postponement.

Currently there is no Judicial Council–approved form for making a request to postpone the small claims hearing, although some courts have developed their own forms. The committee has incorporated into the proposed forms several of the suggestions for improvement received in 2001. For example, the current form includes more space for inserting names and addresses under the clerk's certificate of mailing. The committee also agreed with the 2001 suggestion that there be two separate forms, one form with the request for a postponement that can be mailed immediately to the other parties, and a separate form for the order that can be mailed later, after the judge has considered the request. The committee did not agree with the 2001 suggestion that the requesting party be required to fill in the addresses of the parties on the order's proof of service. The committee believed that the court clerk should continue to be responsible for completing this information.

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<sup>1</sup> A copy of Code of Civil Procedure section 116.570 is attached at page 7.

Although four commentators in 2001 and several commentators in 2003 recommended that the form be made mandatory, the committee has concluded that this might not be practical for self-represented litigants, who may not be aware of procedures and forms. Section 116.570 also specifically allows a request for postponement to be made by letter.

#### Alternative Actions Considered

The current proposal for approval of two forms is the result of alternative action directed by the Judicial Council in 2001. In 2001, after a proposed postponement form was circulated for comment, the Judicial Council agreed with a commentator who suggested that legislation instead of a rule of court for procedures establishing postponement would be the more appropriate course before forms were adopted. Now that the legislation has been enacted, the attached forms are proposed to implement the new statutes, instead of the previous proposed rule. Although forms are not required and small claims parties may continue to request postponement by letter (Code Civ. Proc. § 116.570), the forms can help small claims parties complete the request in a way that will allow the judge to make the required good cause findings for granting or denying it in advance of the hearing. The forms will also establish a uniform statewide procedure for making the request.

#### Comments From Interested Parties

Thirty-three comments were received. Of those, 18 commentators agreed with the forms as proposed, and 15 agreed with the forms if certain aspects were amended. No one disagreed.

In response to comments received, the subcommittee made changes in the “Important Notices” box at the top of the *Request to Postpone Small Claims Hearing* (form SC-110), advising in item 2 that, regarding a late-filed request, “[t]he court will decide if good cause was shown. (Code Civ. Proc., § 116.570(a)(2).) If the court denies your request to postpone, your case will remain set on the original date.” In item 3 it also clarified that the \$10 fee is “non-refundable” because the fee is for processing the request, regardless of the outcome. The party is also instructed to “Submit the fee with this request.”

Several commentators felt that notice of the request by telephone, e-mail, or fax, which is not required by statute but helpful in providing notice, could confuse small claims parties or present an obstacle that might prevent a party from making the request in the first place. In response, the subcommittee has clarified that that provision, found in item 3b of the request, is optional. The date of service of the

request was also added to items 3a and b of form SC-110. Other technical changes were made in response to comments received.<sup>2</sup>

#### Implementation Requirements and Costs

Courts may incur some minor costs in making the forms available to the public. Some courts no longer keep supplies of paper forms on hand, however. Instead, these courts will print a form on request from the California Court Web site for a small fee. Commercial publishers may incur costs in publishing the new forms.

#### Attachments

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<sup>2</sup> The chart of comments and committee responses is attached at pages 8–16.

## **Code of Civil Procedure**

**116.570.** (a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

(3) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(4) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

(5) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

A copy of this request must be mailed or personally delivered to each of the other parties in this case. File the original request with the court and keep a copy. (Code Civ. Proc., § 116.570(a)(3).)

If the request is not filed with the court at least **10 days** before the hearing, the requesting party must give the court a good reason why the request is being filed later. (*Explain under item 2b below.*) The court will decide whether good cause was shown. (Code Civ. Proc., § 116.570(a)(2).) If the court denies your request to postpone, your case will remain set on the original date.

If the plaintiff's claim was timely served on the defendant, there is a non-refundable \$10 fee for filing a request to postpone the hearing. (Code Civ. Proc., § 116.570(d).) Submit the fee with this request.

1. I am the ☐ plaintiff ☐ defendant in this case.

2. a. I request that my small claims hearing (date): be postponed for the following reason (be specific):

b. ☐ This request is being made less than 10 days before hearing for the following reason (*be specific*):

3. a. A copy of this request was ☐ mailed ☐ personally delivered to each of the other parties in this case on (date): \_\_\_\_\_ at the following address as required by Code of Civil Procedure section 116.570(a)(3) (specify name and address): \_\_\_\_\_

b. ☐ (Optional) In addition to the requirement above, each of the other parties was also notified of this request by ☐ telephone ☐ e-mail ☐ fax on (date): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

<p>PARTY (Name and address):</p> <hr/> <p>TELEPHONE NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>FAX NO. (Optional):</p>	<p>FOR COURT USE ONLY</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>	<p><b>DRAFT 4</b></p> <p><b>8/4/03</b></p>
<p>PLAINTIFF:</p> <p>DEFENDANT:</p>	
<p><b>ORDER ON REQUEST TO POSTPONE SMALL CLAIMS HEARING</b></p>	<p>CASE NUMBER:</p>

1. ☐ The request to postpone the small claims hearing is **granted**. The hearing (date):  
is changed to:

Date:	Time:	Dept.:	Room:
<b><i>ALL PARTIES ARE ORDERED TO APPEAR IN COURT AT THE TIME AND PLACE SHOWN ABOVE.</i></b>			

2. ☐ The request to postpone the small claims hearing is **denied**. THE CASE REMAINS SET ON THE ORIGINAL HEARING DATE. ALL PARTIES MUST BE PRESENT ON THAT DATE.
- a. ☐ The request was not accompanied by a \$10 filing fee.
- b. ☐ The request was not filed at least 10 days before the hearing and good cause was not shown for the late request.
- c. ☐ Other (*specify*):

Date: \_\_\_\_\_

\_\_\_\_\_  
(JUDICIAL OFFICER)

**CLERK'S CERTIFICATE OF MAILING COURT ORDER**

I certify that I am not a party to this action. This *Order on Request to Postpone Small Claims Hearing* was mailed first class, postage prepaid, in a sealed envelope addressed as shown below. The mailing and this certification occurred at (place):

, California, on (date):

Date: \_\_\_\_\_ Clerk, \_\_\_\_\_, Deputy

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Rachelle Agatha Executive Officer Superior Court of California, County of Amador	A	N	None.	
2.	Mr. Grant Barrett General Counsel Superior Court of California, County of Calaveras	A	N	Good work on forms. Agree—mandatory form not needed and may be an impediment.	
3.	Hon. Ronald L. Bauer Orange County Rules and Forms Committee Superior Court of California, County of Orange	AM	Y	Form SC-110: Remove item 3b, since Code of Civil Procedure section 116.570 does not require additional notification; it may only serve to confuse the parties. (The Rules and Forms Committee of the Superior Court of Orange County agreed with comments submitted by the managers of Civil Family Law Operations and Commissioner Barry Michaelson at a meeting on June 19, 2003.)	Several commentators commented on item 3b. (See also nos. 6 and 25, below.) Although not required by statute, the committee believes that notice by telephone, e-mail, or fax in addition to mailed notice is to be encouraged. Therefore the committee has amended 3g to read: “ [ ] ( <i>Optional</i> ) In addition to the requirement above, each of the other parties was also notified of the request by [ ] telephone [ ] e-mail [ ] fax on ( <i>date</i> )_____.”
4.	Mr. Saul Bercovitch The State Bar of California	A	Y	Committee on Administration of Justice supports this proposal. The forms are easy to read, understand, and follow. They would assist a small claims litigant in requesting a postponement of the hearing date. Yet, since they are not mandatory, they would not prejudice a small claims party who was unaware of them.	
5.	Mr. Greg Blevins Attorney Tulare County Small Claims Advisor	A	N	None.	



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6.	Mr. Allen J. Capeloto Small Claims Advisor Superior Court of California, County of San Mateo	AM	N	I agree with the form of the order. I agree with the request to postpone, except for item 3b. Since notice by telephone, fax, or e-mail is not required by the statute, I think this additional representation will only confuse small claims litigants. They may think they must give this additional form of notice, and if they cannot do so they may erroneously conclude they have no right to request the postponement, I think this form is a good one, but I would make it very clear that the additional notice is at the option only of the requesting party.	The committee agrees. See response to commentator no. 3, above.
7.	Ms. Monique Chavez Supervisor — Civil and Small Claims Superior Court of California, County of Los Angeles	AM	N	On form SC-110, in the “Important Notices” box at the top of the page, item 2, second line, in parenthesis, change item “2” to “2b.”  Add to the second sentence “The court will decide if good cause was shown on the date of the hearing.”	The committee agrees that the explanation for a late-filed request must be provided under item 2b and has made that change on the form.  The committee does not agree that a decision to postpone the hearing will necessarily be made on the date of the hearing. The purpose of the request is to prevent unnecessary court appearances and to obtain a court ruling in advance of the hearing. For example, if a surgery were scheduled on the date of the hearing, a party could seek to obtain a court order in advance of the hearing date.
8.	Ms. Janet Deffebach Superior Court of California, County of Los Angeles, Alhambra Court	A	N	None.	

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9.	Ms. Sue DuFour Supervising Legal Clerk II Superior Court of California, County of Stanislaus	A	N	Two separate forms will be less confusing to pro pers.	After circulating a single two-sided form with the request and order, the committee agreed with a 2001 suggestion that there be two separate forms. The request can be mailed immediately by the requesting party to the other parties in the case, and a separate form for the order can be mailed later after the judge has considered the request for postponement. A separate order form is also easier to find in the court file compared to an order on the back of another form.
10.	Ms. Christine Fabris Court Services Coordinator Mediation Center of San Joaquin County	A	N	None.	
11.	Mr. Stan Ferrell Asst. District Office Chief Superior Court of California, County of Los Angeles	AM	N	Form SC-110: Section 2b — please consider stating the reason an explanation is necessary, to wit, violation of the 10-day rule.	The committee did not agree with this suggestion and felt that the reason is satisfactorily explained.
12.	Mr. Robert Gerard President Orange County Bar Association	AM	Y	Form SC-110: Under “Important Notices” add a new item 4 that reads “When filling out this form, be sure to mark the appropriate boxes.”  Under item 2A of the form, there should be spaces for the “Time” and “Department” of the hearing in addition to the date.	The committee believes that it is self-explanatory that boxes present choices. The committee does not believe that an instruction is necessary.  The committee believes that providing only the date of the hearing to be postponed is sufficient notice to the other side and the court of the postponement request.
13.	Ms. Kim Gogue	AM	N	Additional space on order to put in the clerk’s name.	The order has a signature line for the

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	Legal Processing Clerk III Superior Court of California, County of Tulare			The proposed forms will be easier for users to complete.	“Judicial Officer.” This is consistent with the requirement of Code of Civil Procedure section 116.570 that “the court shall postpone the hearing” on a proper showing. If postponement is ordered, the clerk would notify the parties of the new hearing date, time, and place.
14.	Ms. Barbara Hefner Supervisor Superior Court of California, County of Merced	A	N	None.	
15.	Ms. Nancy Iler Supervisor Superior Court of California, County of San Benito	A	N	None.	
16.	Ms. Maida Jacobo Superior Court of California, County of Santa Cruz	A	N	None.	
17.	Ms. Carol Johnson Supervising Clerk — Civil/Small Claims Superior Court of California, County of Kern	AM	N	Make one form with two pages; change title of form to “Request and Order to Postpone Small Claims Hearing.”  Under signature line add boxes indicating a judge, commissioner, or clerk can sign said order.	The committee disagrees. See committee response under no. 9, above.  The committee disagrees. See committee response under no. 13, above.
18.	Ms. Michelle Martin Lee Deputy Clerk Supervisor Superior Court of California, County of Los Angeles	A	N	Would prefer request and court order on single sheet.	The committee disagrees. See committee response under no. 9, above.
19.	Mr. Stephen V. Love	AM	N	Request form (SC-110): It doesn’t include a provision	The committee did not agree with this

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	Executive Officer Superior Court of California, County of San Diego			<p>for resets.</p> <p>Item 2b. Superior Court of San Diego County does not require a reason for the first continuance.</p> <p>Item 1 under “ Important Notices” — add a box to allow for payment of fee on the date of hearing.</p> <p>Request and order forms — make them one form.</p> <p>Delete reference to \$10.00 — add “pay appropriate/statutory fee.”</p> <p>Order form (SC-111): Item 1, delete the words</p>	<p>suggestion. The form implements Code of Civil Procedure section 116.570, which is a request for postponement of the hearing date after the defendant has been served. Resets apply when a defendant has not yet been served, which is not the purpose of this form.</p> <p>The form is consistent with recent amendments to Code of Civil Procedure section 116.570.</p> <p>The committee does not agree with this suggestion. The purpose of the statute and form is to allow the parties to seek postponement in advance of the hearing date. See also response under no. 7, above.</p> <p>The committee disagrees. See committee response under no. 9, above.</p> <p>The committee does not agree with this suggestion because the \$10 fee is stated in Code of Civil Procedure section 116.570 and telephone calls to the clerk’s office asking about the fee can be avoided by putting it on the form.</p> <p>The committee agreed and reworded the sentence to read, “The hearing (<i>date</i>) is</p>

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				“vacated and” so item 1 says, “The hearing (date): is postponed to:”	changed to:”
20.	Ms. Kelli Lyerla Paralegal/Small Claims Advisor Napa County Counsel	A	N	None	
21.	Ms. Wanda Mackey Court Services Supervisor — Civil Superior Court of California, County of Shasta	AM	N	This certificate of mailing on the <i>Order on Request to Postpone</i> should not combine a certificate of mailing with a certification that the document is a true and correct copy, as the certificate of mailing is done on the ORIGINAL order. It seems that there should be a separate signature line for the mailing (just above the certified copy statement). The clerk can fill out the certificate of mailing and then properly make a certified copy of the original.	The committee agreed to delete the certification sentence at the bottom of the Clerk’s Certificate of Mailing portion of the form.
22.	Ms. Sandra Mason Director of Civil Operations Superior Court of California, County of San Luis Obispo	AM	N	Form SC-110: Item 3a should include the date of mailing.  Consider including further “available dates” to prevent additional requests as a result of continuance.	The committee agreed and made this change under item 3a and item 3b.  The committee did not make this change because there was concern that parties might request dates far into the future. The committee also believes that the court should control the court calendar.
23.	Ms. Laraine Noel Court Services Supervisor Superior Court of California, County of Trinity	A	N	None.	
24.	Ms. Sharon Shaw Assistant Executive Officer Superior Court of California,	A	N	None.	

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	County of Mono				
25.	Ms. Nora Shea Court Supervisor II Superior Court of California, County of San Francisco	AM	N	<p>Item 3b could be confusing (SC-110) as it seems to be a duplicate of item 3a.</p> <p>Could the order (SC-111) be combined with the request (SC-110) into one form?</p>	<p>The committee has clarified item 3b as “optional.” See committee response under no. 3, above.</p> <p>The committee disagrees. See committee response under no. 9, above.</p>
26.	Ms. Elena Simonian Court Administrator Superior Court of California, County of San Francisco	A	N	<p>These forms should be mandatory. They put the litigants on notice that a fee is due and make it easier and more consistent for courts to collect.</p> <p>Delete statute language re postponement may be made by letter.</p>	<p>The committee disagrees with the suggestion that Code of Civil Procedure section 116.570 be amended to make the forms mandatory and delete the request by letter option. The committee believes that the process should remain simple and user-friendly for self-represented small claims parties.</p>
27.	Ms. S. Stuchlik Court Section Supervisor Superior Court of California, County of Alameda	AM	N	<p>1. Should the request include the date the party was served?</p> <p>2. The request would be rejected if filing fee did not accompany request at the time of filing rather than on the order, unless it was clear service was untimely.</p> <p>3. Distinguish “All” parties separate from</p>	<p>Yes, the committee agreed. It added the date that the request for postponement was mailed or delivered to the other parties under items 3a and 3b on the form.</p> <p>The forms are consistent with Code of Civil Procedure section 116.570. The request informs the parties under “Important Notices” that a \$10 fee must be submitted with the request. It will be up to the court to administer collection of the fee, which may also be a basis for the order denying the postponement.</p> <p>The committee was not sure it understood</p>

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				unserved defendants.	this comment but noted that the hearing would be “reset” and not postponed for unserved defendants.
28.	Mr. Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission of the City and County of Sacramento	AM	N	I would add that if the court does not find good cause for filing the request for postponement late, it will deny the request to postpone and litigants must attend the hearing as scheduled.	The committee agreed with this suggestion and has added it under item 2 of the “Important Notices” on the <i>Request to Postpone</i> form.
29.	Ms. Jan Weaver Supervisor Superior Court of California, County of Placer	A	N	None.	
30.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	None.	
31.	Ms. Anita Wilcox Small Claims Advisor San Luis Obispo Small Claims Advisory	AM	N	<p>Isn’t service supposed to be done by someone “18 years of age and not a party to the action” like the Memo of Costs? Although I don’t think the plaintiff/defendant should be prohibited from mailing if that’s how it’s currently done. See proof of service of Memo of Costs and suggested changes, attached. Form SC-110: include under request item 3a “18 years of age and not a party to the action.”</p> <p>Add in item 3b: Name and address of person serving.</p>	<p>The committee did not agree with this suggestion. Under Code of Civil Procedure section 116.570 “the requesting party shall mail or personally deliver a copy to each of the other parties to the action.” Therefore the request can be served by the party making the request.</p> <p>The committee agreed, in part, by amending items 3a and 3b to state that the request “has been mailed,” etc. to avoid the impression that the request can only be</p>

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					personally served by the party requesting the continuance.
32.	Ms. Millie Wise Legal Process Supervisor Superior Court of California, County of San Joaquin	AM	N	In reading Code of Civil Procedure section 116.570 (5)(d) it states that the \$10 fee will be charged for the filing of a request for postponement and rescheduling of a hearing date. Does this mean that if the request is denied the fee should be returned? This is how a litigant would read the code section.	The committee agreed that a party could interpret the statute and form to require return of the \$10 if the request is denied. To clarify that the \$10 is for processing the request, regardless of the outcome, the committee has added the wording “‘nonrefundable’ \$10 filing fee” under item 3 of the “Important Notices.”
33.	Ms. Jodi Wrigley Court Services Supervisor Superior Court of California, County of Shasta	A	N	None.	